



# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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March 18, 2021

Juliana H. Brazile, Town Clerk  
Town of Arlington  
730 Massachusetts Ave  
Arlington, MA 02476

**Re: Arlington Special Town Meeting of November 16, 2020 -- Case # 10016**  
**Warrant Articles # 17, 20 and 21 (Zoning)**  
**Warrant Articles # 3, 4, 7 and 8 (General)**

Dear Ms. Brazile:

**Articles 3, 4, 7, 8, 17, 20 and 21** - We approve Articles 3, 4, 7<sup>1</sup>, 8, 17, 20 and 21, and the map amendment related to Article 21, from the November 16, 2020 Arlington Special Town Meeting. We will return the approved map to you by regular mail. Our comments regarding Articles 8 and 17 are provided below.

**Article 8** - Article 8 amends the Town's general by-laws, Title II, "Committees and Commissions" to add a new Article 14, "Affordable Housing Trust Fund & Board of Trustees."<sup>2</sup> The new by-law is adopted pursuant to the authority of G.L. c. 44, § 55C for the purpose of "provid[ing] for the preservation and creation of Community Housing in the Town of Arlington." Section 2, "Purpose."

Section 6, "Meetings of the Trust," provides that the Trust shall meet at least quarterly and shall give notice in accordance with the provisions of the Open Meeting Law.<sup>3</sup> In addition,

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<sup>1</sup> We take no action on the portion of Article 7 that amends the 1993 vote of Town Meeting under Article 19 pertaining to the "Vision 2020 Goals" (now titled as "Envision Arlington Statements of Community Values") amending the nine statements as set forth in Article 7, because this portion of the vote is not a by-law amendment and is therefore not subject to the Attorney General's review and approval pursuant to G.L. c. 40, § 32.

<sup>2</sup> We take no action on the portion of Article 8 accepting the provisions of G.L. c. 44, § 55C because that vote is not a by-law amendment and is not subject to the Attorney General's review and approval pursuant to G.L. c. 40, § 32. However, the Town should consult with Town Counsel regarding whether this vote should be filed with the Secretary of State and the Department of Revenue, Division of Local Services.

<sup>3</sup> The by-law cites the Open Meeting Law as G.L. c. 39, §§ 23A, 23B, and 23C. These sections of G.L. c. 39 have been repealed and the Open Meeting Law provisions are now found in G.L. c. 30A, §§ 18-25. The Town may wish to amend this citation at a future Town Meeting.

Section 6 provides: “A quorum at any meeting shall be a majority of the Trustees qualified and present in person.” (emphasis added). The quorum requirement for the Board of Trustees is determined by the number of members of the Board. The general rule is that in the absence of a statutory restriction, the majority of a board is a quorum, and a majority of the quorum can act. Merrill v. Lowell, 236 Mass. 463, 467 (1920); *see also* Clark v. City Council of Waltham, 328 Mass. 40, 41 (1951). The majority is calculated from the total membership regardless of whether a member is present at a particular meeting. *See Gamache v. Town of Acushnet*, 14 Mass. App. Ct. 215, 219 (1982) (the resignation of one member from a five-member board does not convert the board to a “not more than four” member board.) The Town should consult with Town Counsel with any questions about the specific quorum requirements for Board.

**Article 17** - Article 17 amends the Town’s zoning by-laws, Section 3, “Administration and Enforcement,” Subsection 3.1 (B), “Building Inspector; Enforcement,” to add additional text to the end of Subsection 3.1 (B), as follows (new text in underline):

No person shall erect, construct, reconstruct, convert or alter a structure, or change the use or lot coverage, increase the intensity of use, or extend or displace the use of any structure or lot without applying for and receiving the required permit(s) from the Building Inspector. No such permit shall be issued until the Building Inspector finds that the applicant is in compliance with the applicable provisions of Title VI, Article 7 of the Town Bylaws.

Subsection 3.1 (B) as amended requires compliance with Title VI, Article 7 of the Town’s general by-laws before the Building Inspector shall issue a “permit.” Title VI, Article 7 of the Town’s general by-laws pertains to “Notice of demolition, open foundation excavation, protected tree removal, new construction or large additions” and requires that prior to the commencement of certain site work or within seven calendar days of the filing of an application for a building permit, the owner will give notice to all abutters within 200 feet of such site work. *See* Title VI, Article 7 (A).

It is unclear what the Town means by “permit” and whether this refers to a building permit. However, Subsection 3.1 (B) cannot be applied to authorize the withholding of the building permit for failure to comply with the general by-law requirements in Title VI, Article 7, as explained in more detail below.

The State Building Code (“Code”) governs the issuance of a building permit. *See* State Building Code, 8th Edition, 780 C.M.R. §§ 105.3.1. More specifically, the Code requires the Building Inspector (as Code Enforcement Officer under the Code) to issue a building permit where the applicant has demonstrated compliance with the Code and the town’s *zoning* by-laws. 780 C.M.R. § 105.3.1; *see also* G.L. c. 40A, § 7. In addition, G.L. c. 40A, § 7 authorizes the withholding of a building permit only if the applicant’s proposed project is in violation of the town’s *zoning* by-laws. Thus, a town cannot withhold a building permit for failure to comply with a town’s general (non-zoning) by-law requirements. The Town must apply Subsection 3.1 (B) consistent with the requirements of the State Building Code. The Town should discuss any questions on this issue with Town Counsel.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

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cc: Town Counsel Douglas Heim